

GARDNER, CARTON & DOUGLAS

1301 K STREET, N.W.

SUITE 900, EAST TOWER

WRITER'S DIRECT DIAL NUMBER

WASHINGTON, D.C. 20005

CHICAGO, ILLINOIS

(202) 408-7100

FAX: (202) 289-1504

INTERNET: gcdlawdc@gcd.com

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November 22, 1996

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

**Re: In the Matter of Advanced Television Systems and Their Impact upon the
Existing Television Broadcast Service
MM Docket No. 87-268**

Dear Mr. Caton:

Enclosed, on behalf of MARRI Broadcasting, LP, are an original and five copies of its comments in response to the Federal Communications Commission's Initial Regulatory Flexibility Analysis to the Sixth Further Notice of Proposed Rule Making in the above-referenced proceeding.

Should there be any questions regarding this transmittal, kindly direct them to the undersigned.

Sincerely,



Jocelyn R. Roy

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact upon the) MM Docket No. 87-268
Existing Television)
Broadcast Service)

IRFA COMMENTS OF MARRI BROADCASTING, LP

MARRI Broadcasting, LP ("MARRI"), through its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415, hereby submits its comments to the Initial Regulatory Flexibility Analysis ("IRFA") in response to the *Sixth Further Notice of Proposed Rule Making* in the above-captioned proceeding.¹

I. MARRI's Interest

MARRI separately submitted comments directly in response to the Commission's *Sixth Further Notice* and requests that the Commission incorporate the factual and legal arguments raised in those comments herein by reference.

MARRI is a company in all respects meeting the criteria for a broadcast "Small Business" as defined in the IRFA. It is independently owned and operated and is not dominant in its field. MARRI has annual Gross receipts below \$10.5 million dollars. These comments to the Commission's IRFA are filed

¹ *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Sixth Further Notice of Proposed Rule Making (released August 14, 1996) ("*Sixth Further Notice*").

consistent with MARRI's desire to respond constructively to the FCC's initiatives regarding opening the telecommunications market to small businesses^{2/}.

II. Background and Summary

The best definition of the important role small businesses can and should play in the development of the new era of broadcasting can be excerpted from a recent speech by FCC Chairman Reed Hundt:

..do we see a single-minded, aggressive entrepreneur...arm wrestling the new digital terrestrial technology into a good fit with a business plan? Will this sort of leadership develop if digital is divided into 1500 separate licenses and awarded to the 700 or so firms that own analog licenses? Government policy has fractionated the analog broadcast business. Even if it is good policy for other reasons, that fractionation makes it difficult for broadcasters as a group to develop a competitive business plan.

Time is on the side of the first movers in all digital businesses. That's why the FCC needs to get licenses for Digital TV out next year.

In the bigger markets, the business plans will make sense even assuming a small penetration. But in smaller markets the case may be tougher to make. And someone will need to help finance the digital system, particularly for smaller markets.

If as I suspect, the new Congress directs us to give the licenses away to today's broadcaster, many of those recipients, perhaps most, really don't have this particular present high on their Christmas list. They still regard Digital TV as a burden they are being asked to carry instead of a business opportunity they're being granted. If they are

^{2/} See, In the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers For Small Businesses, GN Docket No. 96-113, Order, 11 FCC Rcd 10043 (1996).

right, that's trouble; and if they're wrong, then their attitude is trouble for this nascent industry.

Every other industry that has asked for a spectrum grant from the public has tried to lay out a compelling vision for their spectrum use. That vision is persuasive with the FCC, they hope. But it also helps finance the new business.^{2/}

MARRI's business strategy seeks to combine the need for new television service in small markets with vacant allocations near major markets to serve those communities which are currently underserved.

III. Discussion

Three essential elements must be present for small business to develop the promise of advanced technology for smaller communities:

A. Rules should allow for mutual solutions to mutually exclusive applications

Where possible, mutually exclusive applicants should be free to seek settlement among themselves. Frequency coordination committees are not in a position to make business decisions for a company and its shareholders. Such coordination committees may be useful in suggesting ways to resolve the many potential interference problems that will arise. However, MARRI believes that conflict between mutually exclusive applicants should be resolved among the parties themselves.

^{2/} A New Paradigm for Digital Television - Speech by FCC Chairman Reed Hundt Digital Convergence Conference-New York, New York, September 30, 1996.

B. The rules should promote the rapid return of analog spectrum and transition to digital.

MARRI believes that the greatest impediment to developing an intelligent business plan for applicants such as MARRI is the uncertainty concerning the time frame in which digital spectrum will be ultimately available. Delays by parties unable to provide DTV service in the manner proposed by the Commission forestalls the provision of service by those applicants that are prepared to offer digital service. Such delays should not be tolerated by the Commission.

C. Flexible options should be developed that are able to meet the needs of unserved and the underserved markets.

The rules must allow for flexibility by allowing the formation of partnerships among applicants in order to efficiently utilize spectrum and speed the delivery of service to the public prior to a final decision concerning which entity should become the permanent licensee. If small business partnerships are not permitted, small companies seeking to operate in smaller communities are disadvantaged by not being able to function in rapidly maturing operating environments.

The Commission is familiar with the public interest benefits of a flexible operating approach through the use of its interim operating authority. Although interim operating authority is generally granted when a broadcast license has been revoked in order to provide uninterrupted service to the public,^{4/} use of

^{4/} See e.g. *In re Applications of Orion Communications, LTD. for Construction Permit for FM Broadcast Station WZLS Biltmore Forest, North Carolina: Biltmore Forest Radio, Inc. for Construction Permit for Joint*

such an approach could also advance the delivery of advanced television services as well.

Under an interim operating authority plan, mutually exclusive applicants would have the right to participate in the operation of a DTV station, on mutually agreeable terms and conditions, with other mutually exclusive applicants. The details of MARRI's interim operating plan for small businesses are attached at Exhibit A.

IV. Conclusion

The public can only benefit if the Commission develops flexible rules which are inclusive and designed to provide advanced services in the most expeditious manner possible. Small businesses are prepared to provide vital services in this regard. Accordingly, MARRI requests that the Commission give serious consideration to the comments it has raised herein and its proposed plan.

Respectfully submitted,

MARRI Broadcasting, LP

By: 

James K. Edmundson
Jocelyn R. Roy
GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, DC 20005
202-408-7100

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SMALL BUSINESS SPECTRUM DEVELOPMENT PARTNERSHIP PLAN

A. Partnership Criteria

General Partners

- 1) Must be small business broadcast operators, meeting the Small Business Administration's ("SBA's") definition, i.e., among other things, a company engaged in the business of broadcasting with less than \$10.5 million in annual receipts.
- 2) Must have tendered an application to the Commission for an allocated channel that has been accepted for filing.
- 3) Must exhibit financial and operational capability to be able to construct and operate a station within 180 days.
- 4) Must meet the Commission's ownership and attributable interests rules without requiring a waiver.

Limited Partners

- 1) May be individuals or groups investing either capital and/or financial assets whose interest in the partnership is limited to promoting non-traditional commercial uses of broadcast spectrum.
- 2) Must have the ability to contribute research and development assistance as required by the General Partners.
- 3) Must meet Commission's eligibility standards for Commission licensees.
- 4) May include other mutually exclusive applicants with pending applications to construct a broadcast station for the same allocation.

B. Operating Procedures

A Partnership may seek Interim Operating Authority from the FCC for an allocated analogue and digital spectrum by:

- 1) Undertaking to negotiate a permanent settlement commencing during the 30 day "B" cut-off period between itself and other mutually exclusive applicants for the same channel which have applications that have been accepted for filing.
- 2) In the event a permanent settlement is not achieved within 90 days after the "B" cut-off period, the Partnership may submit evidence that it made a good faith effort, consistent with public interest standards, and sought to build a consensus to develop a mutually agreeable plan to put the spectrum into service within 180 days from the issuance of an authorization.
- 3) The Partnership may seek interim authority to permit the construction and operation of one transitional analogue channel and one digital channel with a duplicate service area for both conventional and non-conventional broadcast uses.
- 4) The Partnership must present a detailed Partnership Plan describing the respective roles of the Limited and General Partners and the overall operating plan and proposed source of funding.
- 5) The technical proposal would conform in all material respects with Commission rules and policies for NTSC and DTV service.

C. Interim Operating Authority

Consistent with Commission policy, a Partnership granted Interim Operating Authority would operate with temporary authority that would not confer the rights of a permanently licensed broadcaster; however:

- 1) Its partners would be allowed to pursue their application(s) for a permanent license.
- 2) The Interim Operating Authority would presumptively continue until the holder of the permanent authorization commenced operation.
- 3) A Partnership would be entitled to all cable-carriage rights and protection from interference accorded a permanent licensee.
- 4) A Partnership may develop, at its own risk, Flexible Service Offerings including, for example, Open Video Systems ("OVS") and may make interconnection arrangements between Wireless and Local Exchange Carriers; provide flexible Lease Access Channel services and any other multi-service offerings that may be deemed feasible today or in the future.

CERTIFICATE OF SERVICE

I, Barbara N. Haile, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 22nd day of November, 1996, caused to be sent by hand delivery, a copy of the foregoing Comments of MARRI Broadcasting, LP to the following:

By Hand Delivery

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street NW, Room 814
Washington, D.C. 20554

Barbara Kreisman
Federal Communications Commission
Chief
Video Services Division
1919 M Street NW, Room 702
Washington, D.C. 20554

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 918
Washington, D.C. 20554

The Honorable Rachelle Chong
Commissioner
Federal Communications Commission
1919 M Street NW, Room 844
Washington, D.C. 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Roy J. Stewart
Federal Communications Commission
Chief
Mass Media Bureau
1919 M Street NW, Room 314
Washington, D.C. 20554


Barbara N. Haile

Clay Pendarvis
Federal Communications Commission
Chief
Television Branch
1919 M Street NW, Room 702
Washington, D.C. 20554